

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

HOLMES,

Defendant.

Case No. [10-cr-00108-SI-1](#)

**ORDER GRANTING STEPHEN
RICHARD HOLMES'S MOTION FOR A
CERTIFICATE OF APPEALABILITY**

Re: Dkt. No. 39

On November 28, 2016, the Court denied Stephen Richard Holmes's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Holmes now seeks a certificate of appealability to challenge the determination that federal unarmed bank robbery, in violation of 18 U.S.C. § 2113(a), remains a "crime of violence" under U.S.S.G § 4B1.2(a) notwithstanding the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). Recently, another district court in the Ninth Circuit held that unarmed bank robbery is not a crime of violence. *See Doriety v. United States*, No. 16-924 (W.D. Wash. Nov. 10, 2016). In light of differing judicial opinions on this issue, Holmes has demonstrated that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, the Court GRANTS defendant's motion for a certificate of appealability on this issue.

This order resolves Dkt. No. 39.

IT IS SO ORDERED.

Dated: November 29, 2016



SUSAN ILLSTON
United States District Judge